

Missouri Small Business Regulatory Fairness Board

Summary of Duties and Responsibilities of State Agencies

Based on Sections 536.010, 536.050, 536.100, 536.140, 536.300, 536.303, 536.305, 536.310, 536.315, 536.320, 536.323, 536.325, 536.328 as enacted in HCS HB 576

Definitions:

Small Business – a for-profit enterprise consisting of fewer than one hundred (100) full- or part-time employees.

State Agency – each board, commission, department, officer or other administrative office or unit of the state other than the general assembly, the courts, the governor, or a political subdivision of the state, existing under the constitution or statute, and authorized by the constitution or statute to make rules or to adjudicate contested cases.

Small Business Impact Statement: 536.300

Prior to submitting proposed rules for adoption, amendment, revision, or repeal, the state agency shall determine whether the proposed rulemaking affects small businesses and, if so, the availability and practicability of less-restrictive alternatives that could be implemented to achieve the same results of the proposed rulemaking.

If the proposed rules affect small businesses, the agency shall consider creative, innovative, or flexible methods of compliance and prepare a small business impact statement to be submitted to the secretary of state and the joint committee on administrative rules with the proposed rules. A copy of the proposed rules and the small business impact statement shall also be filed with the board on the same date as they are filed with the secretary of state. Such business impact statement and proposed rules shall be submitted to the board prior to providing notice for a public hearing.

The small business impact statement shall provide a reasonable determination of the following:

1. The methods the agency considered or used to reduce the impact on small businesses.
2. How the agency involved small businesses in the development of the proposed rules.
3. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used, if such costs are capable of determination.
4. A description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected. Exception in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205.

5. In dollar amounts the increase in the level of direct costs, such as fees or administrative penalties, and indirect costs, such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other cost associated with compliance if such costs are capable of determination. Exception in cases where the state agency has filed a fiscal note that complies with all of the provisions of section 536.205.
6. The business that will be directly affected by, bear the cost of, or directly benefit from the proposed rules.
7. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

Any proposed rule that is required to have a small business impact statement but does not include such a statement shall be invalid and the secretary of state should not public the rule until such time as the statement is provided. If the state agency determines that its proposed rule does not affect small business, the state agency shall so certify this finding in the transmittal letter to the secretary of state, stating that it has determined that such proposed rule will not have an economic impact on small businesses and the secretary of state shall publish the rule.

Sections 536.300 to 536.310 shall not apply where the proposed rule is being promulgated on an emergency basis, where the rule is federally mandated or where the rule substantially codifies existing federal or state law.

State Agency Public Hearings: 536.303

For any proposed rules that affect small business, the agency shall also submit a small business statement to the board after a public hearing is held. This does not apply to emergency rules. The small business statement required by this section shall provide the following information:

1. A description of how the opinions or comments from affected small businesses were solicited.
2. A summary of the public and small business comments.
3. A summary of the agency's response to those concerns.
4. The number of persons who attended the public hearing, testified at the hearing and submitted written statements.

If a request to change the proposed rule was made at the hearing in a way that affected small business, a statement of the reasons for adopting the proposed rule without the requested change shall be included in the small business statement.

Other State Agency Responsibilities: 536.320

Any state agency authorized to assess administrative penalties or administrative fines upon a small business may consider waiving or reducing penalties or fines for a violation of any statute, ordinance, or rules by a small business under certain conditions.

Small Business Regulatory Fairness Board: 536.305; 536.315

The Small Business Regulatory Fairness Board shall:

1. Provide state agencies with input regarding rules that adversely affect small businesses.
2. Solicit input and conduct hearings from small business owners and state agencies regarding any rules proposed by a state agency.
3. Provide an evaluation report to the governor and the general assembly, including any recommendations and evaluations of state agencies regarding regulatory fairness for Missouri's small businesses. The report shall include comments from small businesses, state agency responses, and a summary of any public testimony on rules brought before the board for consideration.

In any inquiry conducted by the board, because of a request from a small business owner, the board may make recommendations to the state agency. If the board makes recommendations, such recommendations shall be based on any of the following grounds:

1. The rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rule's benefits to the public; or
2. New or significant economic information indicates the proposed rule would create an undue impact on small businesses; or
3. Technology, economic conditions, or other relevant factors justifying the purpose for the rule has changed or no longer exists; or
4. If the rule was adopted after August 28, 2004, whether the actual effect on small businesses was not reflected in or significantly exceeded the small business impact statement submitted prior to the adoption of the rules.

Any state agency receiving recommendations from the board shall promptly consider such recommendations and may file a response with the board within sixty days of receiving the board's recommendations. If the agency determines that no action shall be taken on the board's recommendations, the agency should explain its reasons for its determination. If the state agency determines that the board's recommendations merit adoption, amendment or repeal of a rule, the agency should indicate this in its response.

Small Businesses May File Written Petitions: 536.323

In addition to the basis for filing a petition provided in section 536.041, any affected small business may file a written petition with the agency that has adopted rules objecting to all or part of any rule affecting small business on any of the following grounds:

1. The actual effect on small business was not reflected in or significantly exceeded the small business impact statement submitted prior to adoption of the rules.
2. The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business.
3. The impacts were not previously considered at the public hearing on the rules.

For any rule adopted prior to August 28, 2005, an affected small business may file a written petition with the agency that adopted the rule objecting to all or part of any rule affecting small business on any of the following grounds:

1. The rule creates an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs the rules' benefit to the public.
2. The rule duplicates, overlaps, or conflict with rules adopted by the agency or any other agency or violates the substantive authority under which the rule was adopted.
3. The technology, economic conditions, or other relevant factors justifying the purpose for the rule has changed or no longer exist.

Upon submission of the petition, the agency shall forward a copy of the petition to the board and the joint committee on administrative rules. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition. Within sixty (60) days after receipt of the petition, the agency shall determine whether the impact statement or public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the board within sixty (60) days of receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with the applicable requirements of this chapter.

If the agency determines that the petition does not merit the adoption, amendment or repeal of a rule, any affected small business may seek a review of the decision by the board. The board may convene a hearing or by other means solicit testimony that will assist in its determination of whether to recommend that the agency initiate proceedings in accordance with this chapter. For rules adopted after August 28, 2005, the board shall base its recommendations on any of the following reasons:

1. The actual effect on small business was not reflected in or significantly exceeded the impact statement submitted prior to the adoption of the rule.
2. The impact statement did not consider new or significant economic information that reveals an undue impact on small business.
3. Such impacts were not previously considered by the agency.
4. Such impacts were not previously considered at the public hearing on the rules.

For rules adopted prior to August 28, 2005, the board shall base its recommendations on any of the following reasons:

1. The rules created an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public.
2. The rules duplicate, overlap, or conflict with rules adopted by the agency or any other agency or violate the substantive authority under which the rules were adopted.
3. The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

The board shall make an evaluation report to the governor and the general assembly on rulemaking proceedings, comments from small business, and agency response as provided in this section. The governor or general assembly may subsequently take such action in response to the evaluation report and agency response as they find appropriate.

Agency must submit list of rules that impact small businesses: 536.325

Each agency with rules that affect small business shall submit by June thirteenth of each odd-numbered year a list of such rules to the general assembly and the board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued existence. The general assembly may subsequently take such action in response to the report as it finds appropriate.

The board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules or exceed statutory authority. Within forty-five days after being notified by the board the list of rules adopted, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

The board may solicit testimony from the public at a public meeting regarding any report submitted by the agency under this section. The board shall submit an evaluation report to the governor and the general assembly regarding small business comments, agency response, and public testimony on rules in this section. The governor and the general assembly may take such action in response to the report as they find appropriate.

Small Businesses Entitled to Judicial Review: 536.328

For any regulation subject to sections 536.300 to 536.328, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 536.300 to 536.328. Judicial review shall be commenced in the circuit court of the county in which the small business has its primary place of business, or in Cole County. If the small business does not have a primary place of business in the state, proper venue shall be in Cole County. Notwithstanding any provisions of this chapter to the contrary, an affected small business may seek such judicial review during the period beginning on the date the proposed rule becomes final and ending one year later.